

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") reconsideration decision dated August 29, 2018, which determined that pursuant to section 9(2) of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR"), the appellant was not eligible for disability assistance (DA) for January and February 2018 because his net income in November and December 2017 determined under Schedule B of the EAPWDR exceeded his DA rate determined under Schedule A of the EAPWDR. This resulted in an overpayment of assistance for the months of January and February 2018 and, consequently, the applicant is required to repay the ministry in accordance with section 18 of the Employment and Assistance for Persons With Disability Act (EAPWDA).

PART D – RELEVANT LEGISLATION

EAPWDR Section 9(2), 24, 29 and Schedules A and B
EAPWDA Section 18

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The appellant is a sole recipient of disability assistance with no dependents.

The evidence before the ministry at reconsideration included:

- A Request for Reconsideration dated July 3, 2018 which the appellant signed on August 20, 2018 citing that the reason for his request was because he had submitted his stubs for November and December and that the ministry didn't put them through;
- An Overpayment Chart for assistance months May 2017 to February 2018 which summarizes for each month the amount of income declared, the exemption amount, the assistance amount and the overpayment amount. An overpayment amount shows up for assistance months January 2018 and February 2018 totalling \$2,266.84;
- An Overpayment Notification dated July 3, 2018 informing the appellant of the total amount of \$2,266.84 and that this amount is a debt due to the government of BC and that he is liable to repay the amount by reducing his assistance by \$10 each month;
- An Annual Earnings Exemption (AEE) Calculator from 2017, which summarizes the appellant's 2017 income and the exemption amounts that were applied for each month. The AEE calculations show that the annual limit was reached part way through Nov 2017 with AEE of \$533.79 remaining, which resulted in a "qualifying income" of \$1635.35 for Nov 2017 and \$1186.85 for Dec 2017;
- Monthly Reports (HR81) dated May 5, 2017 (2 declaring different amounts) along with supporting paystubs, June 7, 2017 and supporting paystubs, July 7, 2017 and supporting paystubs, August 4, 2017 and supporting paystubs, September 5, 2017 and supporting paystubs, October 6, 2017 and supporting paystubs, October 29, 2017 and supporting paystub;
- A paystub showing cheque date of Nov 30, 2017 with net pay of \$2169.14;
- A paystub showing cheque date of Dec 29, 2017 with net pay of \$1186.85; and
- A letter from the ministry to the appellant dated July 3, 2018 explaining that an overpayment had occurred when they obtained documents that showed the appellant had received earnings totalling \$2822.20, after applying the annual earnings exemption, and that the appellant's declared earnings were \$0. The ministry wrote that because the appellant is a participant in the Persons with Disabilities Annualized Earnings Exemptions program, he was required to submit a monthly report declaring all income, even if there were no changes in income to report.

The appellant wrote on the Notice of Appeal form on September 11, 2018: "Because the truth is I did hand in my paystubs, and the person who I hand in the paystubs must have mess around with my file so can't blame everything on me so its not fair. Everyone is human so they make mistakes too."

The ministry submission for the written hearing was the reconsideration summary provided in the record of ministry decision.

The appellant did not provide additional information for the written hearing.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry decision dated August 29, 2018, which determined that pursuant to section 9(2) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWD) the appellant was not eligible for disability assistance (DA) for January and February 2018 because his net income in November and December 2017 (determined under Schedule B of the EAPWDR) exceeded his DA rate (determined under Schedule A of the EAPWDR), which resulted in an overpayment of assistance for the months of January and February 2018 and, consequently, the applicant being required to repay the ministry in accordance with section 18 of the Employment and Assistance for Persons With Disability Act (EAPWDA), was reasonably supported by the evidence or a reasonable interpretation of the legislation.

The relevant legislation is as follows:

EAPWDR

Limits on income

9 (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(ii) a family unit receives earned income as set out in paragraph (b) (vi);

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 87/2018:

(vi) the amount of earned income received by the family unit in the calendar month and the source of that income;

Schedule A Disability Assistance Rates

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	758.42

Monthly Shelter Allowance

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

Schedule B

Net Income Calculation

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24 (b) [amount of disability assistance] of this regulation,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) Repealed. [B.C. Reg. 96/2017, App. 2, s. 2 (a).]
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [refundable sales tax credit], 8.1 [climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the *Income Tax Act* (British Columbia);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement

- approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
 - (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
 - (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
 - (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]
 - (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
 - (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
 - (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
 - (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;
 - (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
 - (xxii) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
 - (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
 - (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
 - (xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
 - (xxvi) a loan that is
 - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
 - (B) received and used for the purposes set out in the business plan;
 - (xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
 - (A) Autism Funding: Under Age 6 Program, or
 - (B) Autism Funding: Ages 6 — 18 Program;
 - (xxviii) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]
 - (xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
 - (xxx) a refund provided under Plan I as established under the Drug Plans Regulation;
 - (xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
 - (xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act (Canada)*;
 - (xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
 - (xxxiv) money withdrawn from a registered disability savings plan;
 - (xxxv) a working income tax benefit provided under the *Income Tax Act (Canada)*;
 - (xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
 - (xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;
 - (xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
 - (xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
 - (xl) payments granted by the government of British Columbia under the Ministry of Children and Family

- Development's Family Support Services program;
 - (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
 - (xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
 - (xliii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
 - (xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
 - (xlv) a BC early childhood tax benefit;
 - (xlvi) child support;
 - (xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);
 - (xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;
 - (xlix) gifts;
 - (i) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;
 - (ii) money withdrawn from a registered education savings plan;
 - (iii) compensation paid or payable under section 17 [*compensation in fatal cases*] or 18 [*addition to payments*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act;
 - (liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;
 - (liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;
 - (liv.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;
 - (liv.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;
 - (lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;
 - (lvi) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;
 - (lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;
 - (lviii) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits,
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

Deductions from earned income

2 The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for
 - (i) income tax,
 - (ii) employment insurance,

- (iii) medical insurance,
- (iv) Canada Pension Plan,
- (v) superannuation,
- (vi) company pension plan, and
- (vii) union dues;

(b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

(a) \$1 000, in the case of a family unit that includes only one recipient,

"initial qualifying month", in respect of a family unit and a calendar year, means the calendar month specified for the family unit under subsection (5);

"qualifying income" means

(a) earned income, except the deductions permitted under section 2, and

(b) unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act;

"qualifying month", in respect of a family unit and a calendar year, means

(a) the initial qualifying month for the family unit in the calendar year, and

(b) any subsequent calendar month in the calendar year that is a calendar month for which the family unit is eligible to receive disability assistance under the Act;

"recognized family unit", in respect of a calendar year, means a family unit that

(a) forms during the calendar year, and

(b) includes at least one person who

(i) is designated as a person with disabilities, and

(ii) was previously a recipient in another family unit that was eligible to receive disability assistance under the Act for a calendar month in the calendar year.

(2) For the purposes of section 1 (c) and (d), the lesser of the following amounts is exempt income of a family unit for a qualifying month:

(a) the qualifying income of the family unit for the qualifying month;

(b) the exemption limit of the family unit for the qualifying month calculated in accordance with subsection (3).

(3) The exemption limit of a family unit for a qualifying month for the family unit in a calendar year is the following:

(a) in the case of the initial qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (4);

(b) in the case of any other qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (7).

(4) For the purposes of subsection (3) (a), the exemption limit of a family unit for the initial qualifying month for the family unit in a calendar year is calculated as follows:

(a) in the case of a family unit other than a recognized family unit, the exemption limit is the product of

(i) the base amount for the family unit, and

- (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
- (b) in the case of a recognized family unit that includes only one recipient, the exemption limit is the product of
- (i) the base amount for the recognized family unit,
- (5) For the purposes of subsection (4), the initial qualifying month for a family unit is the following:
- (a) in the case of a family unit described in subsection (4) (a), the initial qualifying month is
- (i) the first calendar month for which the family unit is eligible to receive disability assistance under the Act, if
- (A) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, as a person with disabilities, or
- (B) a member of the family unit received income assistance under the Employment and Assistance Act for the calendar month immediately preceding that first calendar month, or
- (ii) if subparagraph (i) does not apply, the first calendar month, after the first calendar month referred to in that subparagraph, for which the family unit is eligible to receive disability assistance under the Act;
- (7) For the purposes of subsection (3) (b), the exemption limit of a family unit for any other qualifying month (an "index qualifying month") for the family unit in the calendar year is the greater of
- (a) nil, and
- (b) the exemption limit of the family unit for the last qualifying month for the family unit before the index qualifying month, adjusted as follows:
- (i) by deducting the qualifying income of the family unit in that last qualifying month;

EAPWDA

Overpayments – Section 18

- 18** (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.
- (2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

The appellant's position is that he did submit his stubs for those two months and the ministry did not process them so they cannot blame everything on him.

The ministry's position is that the appellant had not properly declared all his income for November and December 2017, which resulted in an overpayment for January and February 2018. The ministry argues that they found out during a review of his file on July 3, 2018 that the appellant's earnings from November and December 2017 had not been declared as is required pursuant to section 29 EAPWDR. They calculated that the appellant had reached the annual earnings exemption limit of \$12,000 part way through November 2017 and that his remaining November income of \$1635.35 was in excess of his disability rate of \$1133.42 and because the earnings had not been declared it resulted in him receiving a January 2018 cheque for \$1133.42. They calculated that his December income of \$1186.85 exceeded his disability rate of \$1133.42 for February 2018 and because the earnings had not been declared it resulted in him receiving a February 2018 cheque for \$1133.42. The ministry argued that because the appellant received disability assistance for January and February 2018 totalling \$2266.84 for which he was not eligible, pursuant to section 9(2) EAPWDR, that he is required to repay this amount back to the ministry in accordance with Section 18 of the EAPWDA.

Panel Decision

Section 3 of Schedule B to the EAPWDR effectively provides for a declining monthly balance of earned income that is exempt from inclusion in calculating a recipient's family unit's net income. This declining monthly balance is referred to as a family unit's Annual Earnings Exemption. Based on the composition of the family unit and the first month of the calendar year that the family unit receives DA, section 3 provides for the calculation of the exemption limit for that month and each subsequent month. In effect, the qualifying (earned) income of the family unit each month is deducted from the Annual Earnings Exemption until the exemption limit reaches \$0.

Section 9 (2) of the EAPWDR states that a family unit is not eligible for disability assistance if the net income of the family unit exceeds the amount of disability assistance determined in Schedule A. In the appellant's situation his DA rate is \$1133.42 per month. There is a paystub in the appeal record that indicates that the appellant had \$2169.14 income in November 2017 and the earnings exemption calculation from the ministry shows that after applying the appellant's remaining annual earnings exemption of \$533.79 for November, the remaining \$1635.35 earnings should have been included as earned income in calculating the appellant's DA for January 2018. Due to reporting and processing time, earned income in November 2017 affects DA for January 2018 (monthly income is reported on the 5th of the following month). Consequently, the appellant was not eligible for the \$1133.42 DA cheque in January 2018.

There is a paystub in the appeal record that indicates that the appellant had \$1186.85 earnings in December that should have been included as earned income in calculating the appellant's DA for February 2018. As the earned income was greater than the appellant's DA amount, the appellant was not eligible to receive the \$1133.42 DA cheque in February 2018. The appellant argues that he did submit his paystubs and the ministry did not process them. The appeal record includes the monthly reports from May 5, 2017 to October 29, 2017 with supporting paystubs, however there are no monthly reports from December 5, 2017 to declare the November earnings, or from January 5, 2018 to declare the December earnings. The panel finds that because appellant did not dispute having November or December earnings and because these earnings were higher than the legislated rates, that the ministry was reasonable in determining that the appellant was not eligible for disability assistance for January and February 2018.

Section 18(1) of the EAPWDA states that if disability assistance is provided to a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount of the overpayment provided for that period. The ministry has indicated that the appellant is to repay the \$2266.84 that he received for January and February 2018, due to not being eligible for it, at a rate of \$10 per month. The panel finds that the ministry was reasonable to apply the overpayment as is required by section 18(1) of the EAPWDA as the appellant received \$2266.84 for which he was not eligible.

Conclusion

The panel finds that the ministry reconsideration decision, which determined that the appellant was not eligible for January and February 2018 disability assistance, which resulted in an overpayment that he is required to repay, was reasonably supported by the evidence before the ministry at the time of reconsideration. The appellant is not successful in his appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Janet Ward	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018 October 22

PRINT NAME Marcus Wong	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018 October 22
PRINT NAME Kim Read	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018 October 22